



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,395	09/30/2003	Kevin V. Keigley	137-007 Absolute	6493

31179 7590 08/16/2004

JAMES D. HALL
BOTKIN & HALL, LLP
105 E. JEFFERSON BLVD.
SUITE 400
SOUTH BEND, IN 46601

EXAMINER

PECHHOLD, ALEXANDRA K

ART UNIT	PAPER NUMBER
----------	--------------

3671

DATE MAILED: 08/16/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/675,395	Applicant(s) KEIGLEY, KEVIN V.	
	Examiner Alexandra K Pechhold	Art Unit 3671	<i>My</i>

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 July 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☐ Claim(s) _____ is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Voorhees (US 3,774,695).** Voorhees discloses an implement comprising a soil working part, seen generally as (28), a hitch part pivotally connected to the soil working part, seen by arms (36, 38) in Fig. 8, which include a hitch (12), and extensible linkage connected to the soil working part, seen as bracket (32) with turnbuckle (34), the extensible linkage having an extended position and a retracted position, the soil working part pivotally shiftable about the hitch part in response to the shifting of the linkage between its extended and retracted positions, as Voorhees describes in column 3, lines 45-52. Voorhees discloses a transverse frame member, seen as frame means (30), a plurality of transversely spaced downwardly projecting scarifying teeth, seen as teeth (50), a plurality of transversely spaced tines, seen as fingers (56), the hitch including a hitch bar seen as arms (36, 38), and being pivotally connected to the frame means (30) as Fig. 8 illustrates, the teeth (50) located between fingers (56) and hitch (12), the linkage carried between the frame means (30) and arms (46, 48) as Fig. 8 shows, the angle of the teeth and tines with the soil being adjustable by shifting

Art Unit: 3671

the linkage between its extended and retracted positions as Vorhees describes in column 3, lines 45-52.

Response to Arguments

3. Applicant's arguments filed 7/26/04 have been fully considered but they are not persuasive. Applicant has combined original claims 1 and 2 into claim 1, and suggests reconsideration of the rejection in light of the following arguments:

- The applicant's claim 1 requires the extensible linkage to be pivotally carried between a frame member and the hitch bar, which the applicant claims is not disclosed in Vorhees. The Examiner refutes this argument, since the extensible linkage (viewed as bracket 32 and turnbuckle 34) is indeed pivotally carried between the frame member (seen as frame means 30) and the hitch bar (seen as arms 36, 38). Support for this conclusion can be found in column 2, lines 20-21 which states that the turnbuckle (34) is pivotally connected at one end thereof to the prime mover (12).
- The applicant also argues that the frame member carries the scarifying teeth as well as a plurality of tines, which is not shown in Voorhees. Figs. 4 and 5 shows the teeth and tines (seen as 50 and 56) carried on the frame member (seen as 30).
- Applicant argues that in Voorhees, turnbuckle (34) is connected to the chassis or frame of the towing vehicle, not any hitch bar. The Examiner is viewing the hitch bar as arms (36, 38) which are

Art Unit: 3671

indeed joined to a hitch assembly, which is the terminology used by Vorhees in column 2, lines 3-4.

- Applicant argues that the fingers (56) in Voorhees are not for engaging the soil which is the requirement of both the scarifying teeth and the tines as claimed by the applicant. The Examiner would like to point out that these intended use recitations do not carry any weight, since the language used in the claims is “for...”, and it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ 2d 1647 (1987).

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will


Art Unit: 3671

the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alexandra Pechhold whose telephone number is (703) 305-0870. The examiner can normally be reached on Mon-Thurs. from 8:00am to 5:30pm and alternating Fridays from 8:00am to 4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will, can be reached on (703)308-3870. The fax phone number for this Group is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1113.


Thomas B. Will
Supervisory Patent Examiner
Group 3600

8/10/04